



The Impact of the New Title I Requirements on Charter Schools

Non-Regulatory Guidance



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A. Charter Schools and Accountability Requirements in NCLB

A-1. Are charter schools subject to meeting adequate yearly progress (AYP)?

Yes, charter schools, like all public schools within a State, are subject to the State's Title I accountability requirements. However, a State shall look to its charter school law to ascertain the entity responsible for overseeing charter school accountability for Title I purposes.

A-2. Which entity in a State is responsible for ensuring that charter schools make adequate yearly progress and comply with other accountability provisions in Title I, Part A?

Section 1111(b)(2)(K) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (NCLB) and Section 200.49(f) of the final Title I regulations (67 Fed.Reg. 71710, 71727, to be codified at 34 C.F.R. pt. 200) require accountability for charter schools to be overseen in accordance with State charter school law. Thus, a State's charter school law determines the entity within the State that bears responsibility for ensuring that charter schools comply with the Title I, Part A accountability provisions, including AYP. The charter authorizer is responsible for holding charter schools accountable for Title I, Part A provisions unless State law specifically gives the SEA direct responsibility for charter school accountability. We do not expect the LEA in which the charter school is located to be this entity, unless it is also the charter authorizer.

A-3. Must charter school authorizers now insert state plans for meeting AYP into individual charter contracts?

NCLB requires that authorizers monitor their charter schools to ensure they are meeting the State's AYP definition. If authorizers wish, they may choose to incorporate the AYP definition into charter contracts, especially for new schools, but NCLB does not explicitly require this step.

A-4. Given the important role for charter authorizers in many States under NCLB, should authorizers be assured resources from SEAs to discharge their accountability oversight responsibilities effectively?

Yes, pursuant to State charter laws, NCLB empowers many charter authorizers with the oversight responsibilities for this Act. In States where the charter law defers to charter authorizers for accountability oversight, SEAs should consult with authorizers, especially in States that permit alternate authorizers such as public universities and/or municipal governments, to ensure they have the resources necessary to perform the duties assigned to them under NCLB.

A-5. Will eligible charter authorizers now be responsible for allocating Title I and other federal formula funds to their charter schools?

No. If a charter school is authorized by an entity other than a traditional (school-district) LEA, the SEA will still be responsible for allocating Title I funds directly to the charter school, pursuant to federal and state laws. In allocating these funds, SEAs will still comply with Section 5206 of ESEA and ensure that funds are allocated in a timely and efficient manner for new and expanding charter schools. If a charter is, under State law, part of an LEA, the LEA will allocate Federal funds to the school on the same basis that it provides funds to its other schools.

A-6. Should State Title I accountability plans specifically address charter schools and reflect input from charter authorizers and operators?

Yes. Charter schools are public schools subject to the accountability requirements of NCLB. In accordance with congressional intent, Title I state accountability plans may not "replace or duplicate the role of authorized chartering agencies" in overseeing accountability requirements for charter schools. State Title I accountability plans should respect the unique nature of charter schools and should reflect input from charter operators and authorizers.

A-7. Are charter schools subject to the same Title I accountability requirements as other public schools under NCLB?

Yes. In general, State charter laws currently require charter schools to participate in a State's assessment system for public schools in the State. Charter schools are subject to the same Title I accountability requirements as other public schools in a given State, including AYP (see A-1 and A-2).

A-8. What if a charter school fails to meet AYP requirements but meets its contractual requirements with its authorizer?

If a charter school fails to meet AYP requirements, then the charter school authorizer must take actions as required by NCLB.

A-9. Does NCLB prohibit more rigorous accountability requirements than the requirements of a State's Title I accountability plan in an existing charter contract or a future charter contract?

No. Nothing in NCLB prohibits the continuation of existing charter contracts, nor prohibits the development of future contracts that meet or exceed the Title I accountability requirements of NCLB. If a charter school's contract with its authorizer imposes more immediate consequences than a State's Title I accountability plan, the Department believes the authorizer should continue to ensure that the school abides by the charter contract under state law, not withstanding the fact that the school may have made AYP.

B. Charter Schools and the Title I Public School Choice Provisions

B-1. May an eligible charter school that is part of an LEA be listed as a choice option for parents who wish to transfer their child to a higher-performing school?

Yes. LEAs should list charter schools that have not been identified for improvement, corrective action, or restructuring as choice options. Section 200.44(a)(3)(B)(ii) of the Title I regulations (67 Fed. Reg. 71710, 71724, to be codified at 34 C.F.R. pt. 200) also discusses charter schools as choice options.

B-2. If a charter school is its own LEA but falls within the boundaries of a larger LEA, should eligible students from the larger LEA be able to transfer to it?

Yes. An LEA should work with charter school LEAs within its geographic boundaries to reach agreements allowing students to transfer to these schools. Also, allowing eligible students to transfer to a charter school LEA within its boundaries does not lift the requirement that the LEA provide choice options in schools that it operates.

B-3. Do charter schools that admit students using a lottery have to give priority to eligible students transferring under the public school choice provisions of NCLB?

No. Nothing in the statute requires that students transferring under the Title I public school choice provisions be granted preference in these lotteries. State law determines how and if lotteries operate for oversubscribed charter schools. Also, to be an eligible charter school under the Federal charter school grants program, a charter school must use a lottery to admit students if there are more applicants than openings; however some State laws allow other methods for determining admission to oversubscribed charter schools.

B-4. Must parents be notified if a charter school is identified as in need of improvement, corrective action, or restructuring?

Yes. If a charter school is identified for improvement, parents of students enrolled at the school must be notified of its status before the beginning of the school year following identification, just as parents of students enrolled in other public schools are notified. If a charter school is part of an LEA, then the LEA should notify parents of their options. If the charter school is an LEA itself, then the authorizer or the charter school itself should notify parents of the school's status and their options, including returning children to their "home" public school.

B-5. Are charter schools that are parts of LEAs under State law, required to provide choice options and offer transportation for students to other higher-performing schools in the LEA if the charter school is identified by the State as in need of improvement, corrective action, restructuring?

Yes, consistent with the statute, LEAs that authorize charter schools must provide choice options and offer transportation to other public schools of choice within the LEA, even if a State's charter law does not require that transportation funds be made available for charter schools.

B-6. Are charter schools that are their own LEAs under State law required to provide choice options and offer transportation for students to other higher-performing schools in another LEA if the charter school is identified by the State as in need of improvement, corrective action, or restructuring?

No. As noted above, if the charter school is an LEA itself, then the authorizer or the charter school itself should notify parents of the school's status and their options, including returning children to their "home" public school.

However, according to Section 200.44(h)(1) of the Title I regulations (67 Fed. Reg. 71710, 71725, to be codified at 34 C.F.R. pt. 200), if all public schools to which a student may transfer within an LEA (including charter school LEAs) are identified for school improvement, corrective action, or restructuring, the LEA must, to the extent practicable, establish a cooperative agreement with one or more other LEAs in the area. Therefore, a charter school LEA must, if it is practicable, establish such agreements with other LEAs.

Also, according to Section 200.44(h)(2) of the final Title I regulations, LEAs (including charter school LEAs) which have no eligible schools to which qualifying students may transfer, are allowed to offer supplemental educational services to parents of eligible students in the first year of school improvement.

B-7. Are there Department resources one can use to find more information on NCLB's public school choice provisions?

Yes. For more information please consult the Department's Title I regulations at: <http://www.ed.gov/legislation/FedRegister/finrule/2002-4/120202a.html>. You may also wish to consult the non-regulatory guidance on public school choice at: <http://www.ed.gov/offices/OESE/SASA/schoolchoiceguid.doc>

C. Charter Schools and Supplemental Educational Services Provisions

C-1. Can charter schools provide supplemental educational services to students enrolled in low-performing Title I schools?

Yes, charter schools that are not identified for improvement are eligible to become supplemental educational service providers pursuant to the Title I requirements.

C-2. Are students who attend charter schools that are parts of LEAs under State law eligible for supplemental educational services?

Yes. As with other public schools, if a charter school is identified as in need of improvement for two or more years, then Title I students in the school are eligible to receive supplemental educational services. The LEA must pay for such services on the same basis as it would pay for supplemental services for eligible students in any other school.

C-3. Are students who attend charter schools that are their own LEAs under State law eligible for supplemental educational services?

Yes. As with other public schools, if a charter school is identified as in need of improvement for two or more years, then Title I students are eligible to receive supplemental educational services. A charter school that is its own LEA must pay for such services on the same basis as any other LEA. Also, charter school LEAs that are identified for improvement but are unable to enter into cooperative agreements with other LEAs to accept transferring students may make supplemental services available in the first year of school improvement to eligible students.

C-4. How much must an LEA pay for supplemental educational services?

The law establishes a combined funding requirement for choice-related transportation and supplemental educational services. Unless a lesser amount is needed to meet demand for choice-related transportation and to satisfy all requests for supplemental educational services, an LEA must spend up to an amount equal to 20 percent of its Title I, Part A allocation, before any reservations, on:

- (1) Choice-related transportation;
- (2) Supplemental educational services; or
- (3) A combination of (1) and (2).

These funds may come from Title I, other federal programs such as Title V, Part A of ESEA, funds moved into these programs under the “transferability” authorization, or State or local sources. This flexible funding approach means that the amount of funding that an LEA must devote to supplemental educational services depends in part on how much it spends on choice-related transportation.

If the cost of satisfying all requests for supplemental educational services exceeds an amount equal to 5 percent of an LEA’s Title I, Part A allocation, the LEA may not spend less than that amount on those services. An LEA may also spend an amount exceeding 20 percent of its Title I, Part A allocation if additional funds are needed to meet all demands for choice-related transportation and supplemental educational services. This funding mechanism applies to both charter schools that are parts of LEAs and charter schools that are their own LEAs under State law.

C-5. Are there Department resources one can use to find more information on the Title I supplemental educational services provisions?

Yes. For more information please consult the Department's Title I regulations at: <http://www.ed.gov/legislation/FedRegister/finrule/2002-4/120202a.html>. You may also wish to consult the non-regulatory guidance on supplemental educational services at: <http://www.ed.gov/offices/OESE/SASA/suppsvcguid.doc>.

D. Charter Schools and Corrective Action

D-1. Does NCLB give either States or authorizers the authority to reorganize a charter school's management and enforce other corrective actions?

Yes. As with other public schools, charter schools that are unable to make AYP by the end of the second full school year after identification are placed under corrective action according to Section 1116(b)(7)(C) of ESEA. NCLB gives the appropriate entity under state law (see A-2) the responsibility to reorganize a charter school's management and enforce other corrective actions, consistent with State charter law and the State's accountability plan for its charter schools. State charter law shall determine if this requires the charter school to modify its charter contract.

D-2. Under the "corrective action" provisions, NCLB allows States to convert low-performing Title I schools into charter schools. How might a State explain the manner in which this provision would be implemented?

If a State's charter school law allows public schools to convert to charter status, a State's Title I accountability plan may explain how the process of converting schools identified for corrective action to charter schools would work. The accountability plan might also identify the entities that will be expected to authorize such charters and explain whether these entities have discretion in extending the contracts for these charter schools.

E. Qualifications of Teachers and Paraprofessionals

E-1. What qualifications do teachers in Title I charter schools have to meet under NCLB?

Charter school teachers who teach core academic subjects must comply with any requirement in a State's charter school law regarding certification or licensure. A teacher in a charter school does not have to be licensed or certified by the State if the State's charter law does not require such licensure or certification.

However, teachers of core academic subjects in charter schools must meet the other requirements that apply to public school teachers, including holding a four-year college degree and demonstrating competence in the subject area in which they teach. According to Section 9101(11) of NCLB, the term "core academic subjects" includes English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. For more information on the highly qualified teacher requirements,

please consult the Title I regulations, Section 200.56 (67 Fed. Reg. 71710, 71730, to be codified at 34 C.F.R. pt. 200) and the Department's non-regulatory draft guidance on Title II, ESEA, Improving Teacher Quality State Grants, available at: <http://www.ed.gov/offices/OESE/SIP/TitleIIguidance2002.doc>.

E-2. When do charter school teachers have to meet these highly qualified requirements?

Newly hired teachers of core academic subjects in Title I charter schools are teachers that are hired after the 2002-2003 school year. These teachers must meet the highly qualified teacher requirements applicable to charter school teachers before entering the classroom. Teachers of core academic subjects hired before the start of the 2002-2003 school year must meet the requirements by the end of the 2005-2006 school year. For more information on how teachers can demonstrate competence in their subject area(s), please refer to Appendix A of the Department's draft Title II non-regulatory guidance: Improving Teacher Quality State Grants, available at:

<http://www.ed.gov/offices/OESE/SIP/TitleIIguidance2002.doc>

E-3. What qualifications do charter school paraprofessionals have to meet?

Paraprofessionals with instructional support duties in charter schools receiving Title I funds need to meet the same requirements as paraprofessionals in traditional Title I public schools. This requirement applies only to paid paraprofessionals and not parents or other volunteers.

According to Section 1119(c) and (d) of ESEA, paraprofessionals hired after enactment of NCLB (January 8, 2002) and working in Title I programs must complete at least two years of study at an institution of higher education, possess at least an associate's degree, or demonstrate subject matter competence through a formal State or local assessment.

E-4. When do paraprofessionals employed prior to the enactment of NCLB need to meet these requirements?

Paraprofessionals hired before enactment of NCLB (before January 8, 2002) and working in Title I programs must meet these same requirements by January 8, 2006. For more information, please see the draft non-regulatory guidance on paraprofessionals at: <http://www.ed.gov/office/OESE/SASA/paraguidance.doc>

E-5. If a charter school does not accept Title I funds, must it comply with these requirements for paraprofessionals?

No, these requirements are applicable only to Title I schools and to paraprofessionals working in Title I programs.

E-6. Must charter school LEAs reserve a portion of their Title I funds for professional development if they currently meet the "highly qualified"

requirements for charter school teachers and the new requirements for paraprofessionals, do they still need to?

No. Section 1119(l) of ESEA requires all LEAs, including charter school LEAs, to spend between 5 and 10 percent of their Title I allocations on professional development to help all teachers meet the new requirements by the end of the 2005-06 school year. If all teachers and paraprofessionals in a charter school LEA have met these requirements, the funds do not need to be reserved for professional development. However, even though existing staff may meet these requirements, care should be taken to ensure that all teachers and paraprofessionals (including those who transfer in from other schools in the LEA) meet the requirements on schedule.

E-7. Which entity is responsible for ensuring that charter schools comply with NCLB's charter school teacher quality requirements?

Section 1111(b)(2)(K) of ESEA is clear that accountability oversight for charter schools shall be determined by individual State charter laws. The charter authorizer bears primary responsibility for holding charter schools accountable for Title I, Part A provisions (including the Part's teacher quality requirements) unless State law specifically gives the SEA direct responsibility for charter school accountability. We do not expect the LEA in which the charter school is located to be this entity, unless it is also the charter authorizer.